

TRANSLATION FROM ITALIAN INTO ENGLISH

General Register no.
225-04

Vito Roberto Palazzolo

COURT OF PALERMO
SECTION FOR THE REVIEW OF
RESTRICTIVE MEASURES RELATING TO PERSONAL LIBERTY
AND SEQUESTRATION MEASURES

6th April 2004

The Court of Palermo, Section for the Review of restrictive measures relating to personal liberty and sequestration measures, constituted by the following persons:

- | | | |
|----|------------------------------------|-----------------|
| 1) | (Doctor) Concetta Sole | Judge President |
| 2) | (Doctor) Cinzia Emanuela Nicoletti | Judge Member |
| 3) | (Doctor) Mario Conte | Judge |

who met in chambers, and withdrawing the reservation expressed in the separate memorandum, handed down the following

JUDGMENT

Following the review ordered in terms of judgment number 92 handed down by the Supreme Court of Appeal on the days from 09 – 30.01.04, which granted the appeal presented by the defence counsel of Vito Roberto Palazzolo, born in Terrasini on 31.07/1947, nullifying judgment handed down on 30.05 – 03.06.2003 and referring it for review, in terms of which this Court had previously rejected the application set out in the submission dated 04.04.2002 against the judgment dated 18/19 March 2002, in which the Preliminary Investigating Judge of this Court had rejected the request to revoke the precautionary custody measures that had been applied in relation to Mr Palazzolo in terms of article 416 bis of the Criminal Code – *for having been part of a mafia association called “cosa nostra”, together with several associates amongst them Salvatore Riina, Giovanni Bonomo and Giuseppe Gelardi, or for having been permanently included in the abovementioned association, exceeding five persons in number, and for exploiting the power of intimidation arising from his connection with the association and the resulting condition of subjugation and the conspiracy of*

*silence (“omertà”) which derives from it, in order to commit crimes against the life and safety of individuals, personal liberty and against property, for the ends of drug trafficking and “TLE”, as well as arms trafficking and money laundering, and in any event to realise profits and gains through illegitimate means, and furthermore for having abetted mafia associates (Giovanni Bonomo and Giuseppe Gelardi) as fugitives, even while in a foreign country. With the further aggravating circumstances referred to in sections 4 and 6, for having being part of an armed association, and for having financed economic activities with the proceeds from crime. These crimes were committed in Palermo and other places both in Italy and overseas between the 29 September 1982 and the present. (Note: this charge, taken from the charge sheet dated 19.02.1997, was amended in terms of the *tempus commissi delicti* at the request of the Public Prosecutor at the hearing on the 13 November 2002, so as to run from the 29 March 1992).*

OBSERVES AS FOLLOWS

In order to reach a decision, it is useful to recall that with judgment handed down on 18- 19.03.2002, the Preliminary Investigating Judge rejected the request put forward by the defence counsel to revoke the precautionary custody measures applied in relation to Mr Palazzolo, noting that the following elements of proof had been submitted in support of the above request – namely that the status of Giovanni Bonomo and Giuseppe Gelardi was not that of fugitives during their stay in South Africa with Mr Palazzolo; the telephone conversation between Mr Palazzolo and his sister Sara on the 22.06.1996 – these elements of proof were already known and had been evaluated in issuing the custody measures, and did not have any effect neither in the context of the serious evidence, nor on the requirements for enforcing the judgment. The fact that the action against Palazzolo, who was under investigation for the murder of Agostino Badalamenti, had been filed in the court archives (withdrawn), was similarly considered irrelevant.

This Court sitting as a Court of Appeal, handed down judgment against this decision, in terms of which the defence had complained about the court’s failure to examine the *novum*, and had therefore violated the legal principle in terms of which the basis for the precautionary judgment was limited to the allegations in the documents submitted and not including facts which could be deduced there from. This Court rejected the reasons put forward by the defence, holding that the law which provided for the judgment ordered against Palazzolo on 05.03.2002, precluded a reconsideration on appeal of the merits of the existence of serious evidence of guilt and held that article 310 of the Criminal Procedure Code is applicable, and noted that the so-called *absorption principle* applied, which is based upon a judgment which seeks to equate the conviction and the order which set up the prosecution, for the purposes of determining the existence of serious evidence of guilt.

This decision dated 26 - 29 April 2002 was set aside for review by the Supreme Court of Appeal, who in their judgment no.364 dated 18.02-17.03.2003, confirmed the principle already handed down by the Court in judgment no. 39915 dated 26.11.2002, whereby, even after the amendments introduced by Law no. 479/99, the judge charged with reviewing the precautionary custody measures was not precluded from an evaluation of the serious evidence of guilt by reason of the indictment of the

accused for the crime that the measures had been adopted for, due to the fact that the scope of the declaration of unconstitutionality under article 309 of the Criminal Procedure Code, brought into effect in terms of Law no.71/96, remained unaltered.

Besides the ruling regarding the invalidity of the notice of set down for the hearing, the proceedings stood at the same point when judgment was handed down on the 30.05-03.06.2003, by this Court consisting of a different panel of judges, which rejected the appeal on the basis of the following considerations:

- 1) even though with judgment dated 28.03.1992, Palazzolo had been acquitted for the same crime because the facts did not exist, the measures adopted related to conduct that had taken place during a period of time subsequent to the above judgment;
- 2) That the evidence of guilt against Palazzolo was drawn from statements made by the state witnesses (informants), Salvatore Ciulla and Salvatore Palazzolo, who referred to events both preceding and subsequent to the date of 28.03.1992, and in order to determine whether there was a sufficiently serious body of evidence, the Court could consider elements of proof referring to a previous period in the event of such elements being relevant in establishing that the accused participated in a criminal organisation during the period subsequent to the acquittal.
- 3) That consequently, once Ciulla had confirmed that Palazzolo was a “man of honour” belonging to the Cinisi “family”, and identified him as a friend (or literally co-parent, in the sense that one had baptised the child of the other) of Antonino Madonia, the reference made in the Preliminary Investigation Judge’s motivation to Palazzolo’s shareholding in the company PAGEKO Ag. was only used to demonstrate the reliability of the above informant;
- 4) That the accused’s involvement in the association was demonstrated, apart from his shareholding in PAGEKO, a company associated with Cristel Biersack Import Export GBM of which Antonino Madonia was a director, also by the contact that he had with two members of the mafia, Giovanni Bonomo and Giuseppe Gelardi who had travelled to South Africa, where Mr Palazzolo had been resident for a number of years and had acquired citizenship. His association was further demonstrated by reason of the unbreakable nature of any connection to a mafia type association;
- 5) That the contents of a telephone conversation conducted in cryptic language and intercepted between Palazzolo and his sister could not be considered useful in excluding Palazzolo’s involvement in the organisation; taking into consideration also that the defence implicitly abandoned this argument, by producing documentation during the course of the hearing to exclude the admissibility of the intercepted call;
- 6) That the fact that the case documents relating to the murder of Agostino Badalamenti had been filed in the court archives (i.e. the case had been withdrawn) was irrelevant, in that Palazzolo’s involvement in the murder was never alleged in terms of the framework of evidence relating to the custody measures, but the state

witness Salvatore Palazzolo had spoken of the accused's involvement in the strategy planning of the criminal association;

7) That the elements that were acquired subsequently and specified in the memorandum presented at the hearing of 30 May 2003 could not be examined since they related to facts subsequent to the appeal submission, and were therefore such that they would not affect the framework of evidence that had emerged against the accused.

Now in order to circumscribe the context of the decision, and before we outline the principles of law formulated in the case examined by the Supreme Court, we need to recall the conclusions formulated in the original appeal requesting the revocation of the custody measures, which was rejected by the Preliminary Investigating Judge in terms of the order which is being contested, and thereafter outline the motivations for the appeal and the complaints put forward by the defence in the memorandum submitted on 30.05.2003 at the hearing before this Court, which was composed by a different panel of judges.

During the course of the hearing on 30.05.2003, the defence concluded that the precautionary measures applied against the accused should be revoked, based on the following new elements:

- A) Bonomo and Gelardi were not fugitives at the time they visited Palazzolo;
- B) The telephone conversation between the accused and his sister Sara immediately after the departure of Bonomo and Gelardi from South Africa, effectively demonstrated that Palazzolo was not involved in the organisation.
- C) The court documents relating to the murder of Agostino Badalamenti had been filed in the court archives, (i.e. the case had been withdrawn) with specific reference to the accused's position.

In a memorandum submitted on the same date, it was shown how the acquittal handed down by the Court of Rome, Criminal Section V relating to the charges under article 416 bis of the Criminal Code and which became final, implied that even the state witnesses' affidavits taken after this date, had to contain references to the alleged participation of the accused subsequently to the acquittal judgment.

It was also shown how all the interceptions made on the cellular telephone used by Vito Roberto Palazzolo, and in particular those indicated under numbers 5,6 and 7 on the 22.03.1996, on the telephone number 0027836547731, could not be used since they were made in a foreign country in relation to a South African citizen, without the necessary judicial authorisation being obtained to carry out these procedures as set out in article 727 of the Criminal Procedure Code, and this was likewise upheld by the Review Court in its judgment dated 21.10.1999.

This memorandum also specified that Bonomo and Gelardi became fugitives from the 29 May 1996, the date on which the applications for the precautionary custody measures were issued in their regard, and from an attached copy of the list of

departing passengers supplied by the South African Police Public Office, it appeared that the abovementioned had left South Africa on 21 May 1996, in other words eight days before they could have known about the custody order.

Of further significance, from the text transcribed from the telephone conversation indicated as number 37 on the 22.06.1996, intercepted between the accused and his sister Sara on the cellular number 0027836547731 used by Vito Roberto Palazzolo, were the highly negative comments on both the Palazzolo's part with regard to "cosa nostra", and the accused's complete ignorance regarding the alleged criminal conduct of Bonomo and Gelardi.

It was underlined that the affidavits given by the informants Salvatore Palazzolo and Vincenzo Sinacori regarding the murder of Agostino Badalamenti, and those submitted by Francesco Di Carlo and Salvatore Ciulla regarding Vito Roberto Palazzolo's alleged involvement in the "cosa nostra" were extremely generalised, so much so that the Public Prosecutor requested that the case relating to the Badalamenti murder be withdrawn, which was duly done on 7 August 2001; Di Carlo on the other hand, testified regarding events in 1977 relating to a Swiss bank account held by Salvatore Riina, which could not be further confirmed, while Ciulla testified regarding events that had already been examined by the Court in Rome, where the informant's affidavit did not serve as proof regarding these events.

Then with regard to Palazzolo's activities in South Africa, the defence specified that no power of attorney could be found on file, whereby the Italian authorities had duly authorised the Central Operating Services of the Italian Police with the task of coming to South Africa, nor was there any request for a rogatory commission. What they were able to ascertain through informal South African sources, was that certain foreign police officers had been placed under investigation and charged for having helped Italian agents that had been transferred in order to collect evidence against Palazzolo.

The memorandum also made reference to the contents of a reply in a letter signed by E. Lincoln, Director of the Presidential Investigation Task Unit, sent in defence of the South African Police Service, in which he denied that any interception of the accused's telephone calls had been authorised. He confirmed that there was nothing illegal in the business activities being carried out by Palazzolo (supply of mineral water to South African Airways, partnership with Phelps, interests in opening large stores affiliated to a supermarket chain in South Africa and/or Angola, raising fighting cocks in Namibia), and he also established that the accused was not a shareholder in the night club Hemingways, so that Gionata D'Alessio could be considered to have acted on his behalf, and that once he became aware that his visitors were fugitives, he cooperated with the South African authorities so that they could be repatriated.

A copy was also produced of a proposed agreement drawn up by the South African Police and sent to Palazzolo's lawyer, regarding a defamation action being brought by the accused regarding the defamatory accusations that were made against him by two South African officials (Smith and Viljoen) during the course of a television programme, where the authorities recognised that the accusations were unfounded.

In the documentation submitted in support of setting aside the order submitted on the 4 April 2002, in complaining about the lack of foundation for the precautionary measures, the defence recalled the elements of proof that had already been cited in their original request, constituting the *novum* that the Preliminary Investigating Judge was called upon to deliberate, noting inter alia in summary, that Pietro Efisio Palazzolo could not be considered a mafia fugitive since he had never been charged or convicted for the crime of mafia criminal association, nor for crimes connected to the mafia, and that neither the custody order nor the judgment handed down by the Review Court had taken into consideration the telephone conversation which took place between Palazzolo and his sister Sara on the 22 June 1996, because the Court had ordered that intercepted telephone calls in general were not admissible, on the basis of the principle that in the context of precautionary measures, the order did not also cover facts that were capable of being deduced, but covered only those facts which were expressly alleged.

The defence subsequently produced another memorandum with attached supporting documentation at the hearing of 30 May 2003, which in terms of was held by Supreme Court, and as will become evident further on, must unequivocally form the basis of the examination that this Court is charged with. In the above memorandum, the defence illustrated further new elements of proof, these being that at the hearing of 13 November 2002, the Public Prosecutor had amended the charge, indicating the 29 March 1992 as the *dies a quo*, due to the fact that on the previous day, the Court in Rome had acquitted the present appellant, with judgment that became final.

It was pointed out that this change also had an effect on the evaluation of the testimony given by the state witnesses, which were considered fundamental in the Review Court together with the Attorney General's investigation of 22 January 1997, all of which referred only to events that had allegedly taken place in a period prior to the new accusations.

It was therefore concluded that the only elements of proof remaining against Palazzolo were those relating to the investigations carried out by the Central Operating Services from 1996-1997, that had been evidenced by activities involving interceptions, and which were largely considered inadmissible by the presiding court in terms of a judgment handed down on 8 January 2003 (copy thereof attached), particularly with regard to the interception carried out in respect of Palazzolo's South African calls, since the interceptions lacked the necessary legal authorisation. Furthermore, no authorisation had been obtained in terms of article 727 of the Criminal Procedure Code with regard to the activities of the Italian Police working on South African soil. These activities certainly qualified as judicial police activity, duly ordered by the Public Prosecutor's office, and did not merely constitute international cooperation between organs of police, since the South African counterparts of the Italian police were members of "groups" that were not formally part of the local police and therefore not recognised as legitimate representatives of Interpol, and also considering the fact that the Central Operating Services officials had taken part in the investigations carried out by their South African "colleagues" and collected information from them recording criminal activity, giving rise to what would typically have been activities carried out by the Attorney General's office for the purpose of being used in evidence.

The defence finally noted that the interception of calls from Italian users, other than the accused, that were considered admissible by the court, were not taken into consideration for the purposes of issuing the precautionary measures, and the defence therefore insisted on the revocation of the precautionary measures applied against Palazzolo.

In terms of judgment no.92/2004 handed down on the days 09.01- 03.02.2004, the First Criminal Section of the Court of Appeal set aside the previous judgment handed down by this Court on 30.05.2003, and remitted it for re-hearing, and rejected only a procedural argument regarding the notification advice in that it considered the accused's status as a fugitive to remain applicable.

The Supreme Court noted that it was necessary to start from the uncontested fact that Palazzolo had been acquitted on the charge of participation in a mafia association, to which he was allegedly a party until the 28.03.1992, being the date on which the acquittal judgment was handed down by the Court of Rome.

Consequently, *“the sustainability of any possible continued participation in a mafia organisation can only be linked to facts or conduct subsequent to the above date, as we can no longer refer to events and circumstances prior to this date, since they conclusively fall subject to the acquittal judgment, which excluded the possibility that such facts could give rise to the conclusion as a fact that the accused had participated in a criminal association during the period under consideration by the above judgment”*. (Cfr. page 6, line 3 and following of judgment).

It also noted that one could only make reference to previous events indicating the accused's participation in a mafia association during subsequent periods, in the case of a judgment carrying a conviction, and since on the contrary, we were dealing with an acquittal judgment based on the non existence of the facts, where any aspect or element of proof arising from a previous period had already formed the basis of this previous evaluation, it could not be used again as the basis for a contention relating to the alleged conduct of participation subsequent to the acquittal judgment, which had already excluded Mr Palazzolo's participation during the previous period and in terms of which *“these elements having by now lost any probative value as to responsibility. The only value that can at best be afforded these elements of proof is that of a simple and generalised point of reference relating to conduct, events and situations that took place in a subsequent period, and that could in themselves, be such that they carry the weight and bearing of serious evidence indicating guilt in accordance with, and in terms of provisions 1 and 1-bis of article 273 of the Criminal Procedure Code.”* (Cfr. page 6, line 22 of judgment).

The Supreme Court then went on to explain that: *“in charges of association, the interruptive effect of permanence of the crime must link back to the judgment (even in cases where it is not irrevocable), showing with certainty the guilt of the accused, such that the portion of illegal conduct committed subsequently to the above judgment is still subject to prosecution, as a separate crime. But, when an acquittal judgment has been handed down, it is inconceivable to consider any continued existence of the criminal conduct that has already been excluded by the court and by the judgment handed down, and all the effects of exclusion outlined under article 649 of the*

Criminal Procedure Code would then be effective. So that, once the material elements of the crime have been set aside, an unlawful situation (which was deemed never to have existed) cannot substantiate the legal case against the person being investigated (or the accused).”

It also added that taking into account the fact that Palazzolo did not seem to have set foot in Italy from 1982 – “ *on verifying the elements of proof, there is only one element that comes to light as being sufficiently specific when considering the order being contested, this being the incident in 1996, where Mr Palazzolo offered hospitality in South Africa to two members of the mafia family that Mr Palazzolo is accused of belonging to, while all other references are completely vague and generalised, the court having limited itself to the statements made by informants, who recalled events both prior and subsequent to the date of 28/3/1992, without giving any specifics or details, and to the just as generalised observation that the connection to a mafia type association can by its nature be considered to be unbreakable and permanent. Apart from the fact that the two people indicated above were not subject to any custody measures at the time, it is more than evident that the above elements of proof as they stand, cannot formulate a sufficiently serious framework of proof to comply with the requirements of the law.”*

It noted further that the Court had committed an error when it did not consider it necessary to examine the defence’s observations regarding facts that had subsequently come to light in favour of the accused on the basis of the devolutionary principle, typical of the appeal process, reasoning that: “*the abovementioned principle should not in fact be understood to totally preclude the evaluation of subsequent facts that come to light, but should rather prevent the introduction of new and unrelated subject matter to the petition, so that within the context of the subject matter being contested and the reasons proposed for the contention, the court is recognised as having the power to base its own decision “on different or subsequent elements [of proof] compared to those used by the judgment being contested”, and specifically the elements acquired following any additional integrated investigations carried out by the Public Prosecutor or by the defence, or following the examination of witnesses during trial”.*

By way of further considerations, it was added that: “*Given the general principle that the conditions which had justified the issuing of the precautionary measures at the time, should still be required and continue to exist, the same court is recognised as having the power to immediately revoke these measures, should the conditions for their application no longer exist. This solution would in fact appear to not only meet the requirements of substantive justice, but would also be in the interests of procedural economy, as it would seem unnecessarily unwieldy and formalistic to suppose that, even in the case of the discovery or acquisition of incontrovertible proof in relation to the innocence of the person being investigated or the accused, the latter could not formulate an application within the context of an appeal under article 310 of the Criminal Procedure Code, founded on these new elements of proof, and would be compelled to submit a different application to revoke the precautionary measures imposed on him”.*

Based on the above, we need to proceed with a new evaluation of the criminal matter, involving the accused, which we must conduct in an adequate, complete and logical manner in line with the *dictum* of the Appeal Court and the principles and concepts formulated, while respecting the limits set by our assignment, in order to establish whether the serious elements of proof and the alleged associated requirements for the measures ordered by the Preliminary Investigations Judge on 19 February 1997 do still exist in relation to the contested judgment.

It must also be pointed out that based on the legal principles raised by the Supreme Court, whilst remaining within the context of the subject matter being contested and the reasons proposed for the contention, the court is recognised as having the power to base its own decision “*on different or subsequent elements [of proof] compared to those used in reaching the decision being contested*”, and specifically the elements acquired following any additional integrated investigations carried out by the Public Prosecutor or by the defence, or following the examination of witnesses during trial. The Public Prosecutor, during the course of today’s hearing, asked to submit certain documents, which were detailed in writing, and also asked that the cautionary measures be upheld and that the application to set aside the judgment be dismissed.

The defence, on the other hand, while not formally opposing the Public Prosecutor’s submission of further documents, although pointing out their inadmissibility, submitted their own memorandum with attached documentation. This memorandum essentially repeated the previous claims, and noted that the affidavits given by the state witnesses, and in particular those given by Salvatore Palazzolo and Salvatore Ciulla referred to events prior to the 28 March 1992, and were to be considered generalised and relating to “*de relato*” facts (hearsay), and furthermore, that the remaining elements of proof relating to the investigations carried out by the Central Operating Services of the Police between 1996 and 1997 could not be used since they had been acquired without the rogatory authorisation, necessary in terms of article 727 of the Criminal Procedure Code, and that these activities were therefore significant only in as far as they proved the assistance given by Palazzolo to Bonomo and Gelardi, who at the time, could not be considered fugitives, but which in any event does not of itself constitute the sufficiently serious framework that would justify the precautionary measures, as was also held by the Supreme Court.

On the basis of the legal principles set down by the Appeal Court and to which this hearing must adhere, it is therefore necessary for this Court to ascertain in the matter at hand, whether or not sufficiently serious elements of proof do exist against Palazzolo, with regard to the charges in terms of article 416 bis of the Criminal Code, with reference to the period of time subsequent to the 28 March 1992.

On this date in fact, the V Section of the Court of Rome, handed down a final judgment, acquitting the accused of the charge of participation in a mafia type association, briefly stating as its motivation that: “*it is held that no element of proof emerges from the documents filed of record regarding the charge in terms of article 416 bis of the Criminal Code*”. (Cfr. Judgment on file).

This decision has in fact echoed through the proceedings, in the reformulation of the charge and during the course of the hearing of the Third Section of the Court, where

the “*tempus commissi delicti*” was extended at the request of the Public Prosecutor to run from the 29 March 1992 (cfr. judgment document dated 13 November 2003, copy of which was submitted by the defence, and attached to the memorandum filed at the hearing on the 30 May 2003).

Based on the above, with regard to the mass of significant elements of proof taken into consideration by the Preliminary Investigating Judge during the course of the application for custody measures and then by the Court of Review, which emerged regarding the framework of evidence formulated against Palazzolo with reference to events that had been covered by judgment, and on the basis that these had effectively been evaluated by that Court, this Court cannot but take into account what the Appeal Court has already confirmed, namely that where the elements of proof “*have already formed the basis of this previous evaluation, [they] cannot be used again as the basis for a contention relating to the alleged conduct of participation subsequent to the acquittal judgment, ... these elements having lost any probative value. At most, the only value that can be afforded these elements of proof is that of a simple and generalised point of reference relating to conduct, events and situations that may have taken place in a subsequent period, and that could, needless to say, be such that they carry the weight and bearing of serious evidence indicating guilt in accordance with, and in terms of provisions 1 and 1-bis of article 273 of the Criminal Procedure Code*” (see concluding remarks of the motivation of judgment no.92/04, on page 6).

Furthermore, taking into consideration the fact that the Supreme Court and the Preliminary Investigating Judge found only one element subsequent to the 28 March 1992 as having been evidenced, this being the incident where the accused offered hospitality to two members of the mafia family that he was accused of belonging to, namely to Gelardi and Bonomo, it should be noted that while the Appeal Court considered this fact to be particularly significant and having defined it as “*sufficiently specific*”, it confirmed that this could not “*give life to a sufficiently serious framework of proof to comply with the requirements of the law*”. At the same time, it specifically described all the other references as being vague and generalised, without any specifics or details with reference to time frames (cfr. page 7 of judgment), and consequently the remaining elements of proof submitted by the Prosecutor’s office will be examined from this perspective, and in accordance with the principle outlined above, whereby both the Public Prosecutor and the defence would be in a position to submit different and subsequent elements of proof compared to those used by the judgment being contested, within the context of the subject matter and the reasons proposed for the contention (cfr. page 8, first paragraph of judgment).

Firstly, we need to point out that the affidavits made by the state witnesses cannot be taken into consideration, even though they were prepared subsequently to the 28 March 1992 as they referred to events that had happened prior to the above date, since we have no way of establishing whether or not the Court of Rome had already examined these facts, and we must therefore assume that they were covered by the acquittal judgment.

Again regarding the Supreme Court’s decision, we cannot consider as a sufficiently serious a framework of evidence, the generalised affidavits submitted regarding Palazzolo’s participation in a criminal organisation, given without any specific time

frame, nor the circumstances relating to the murder of Agostino Badalamenti, in respect of which the court documents have been filed in the court archives and the case withdrawn. (cfr. especially the affidavits submitted by: Salvatore Ciulla on 01.09.04 (translator's note – there appears to be an error in this date); Salvatore Palazzolo on 3 November 1993; Francesco Di Carlo on 31 July 1996; as well as those submitted by the defence at the hearing on 30 May 2003, given by the informants: Vincenzo La Piana on 05.02.03 and 30.11.98; Tullio Cannella on 22.04.96; Calogero Ganci on 24.03.1999; Giovanni Brusca on 21.03.1999; Francesco Paolo Anselmo on 08.03.1999; Salvatore Palazzolo on 03.11.1993 and 10.01.1999; Salvatore Ciulla on 01.09.1994 and subsequent affidavits; Francesco Di Carlo as above on 31.07.1996; Giovanni Mazzola on 02.12.1998 and Vincenzo Sinacori on 04.03.1997).

As for the documents submitted today by the Public Prosecutor, regarding the affidavit given by the state witness Michele Seidita to the prosecutor's office on 9 March 2004, in which he declared that he was the head of the Partinico "family" and the relative district since 1999, and from 1996 he was close to the Vitale brothers, (called "Fardazza"), we can only repeat that in our opinion, this affidavit is completely generalised on the subject of the accused's position, in that Seidita limited himself to referring "de relato" facts (hearsay) which he had learned from Salvatore Imperiale and Vito Vitale regarding the uncontested fact that Vito Roberto Palazzolo, Giovanni Bonomo and Giuseppe Gelardi were fugitives, and with reference to the time frame, made general references to the inclusion of the accused in the Cinisi "family, and his association with Nino Madonia of the Resuttana "family".

With regard to the other documents produced by the prosecutor's office today in support of the charge against the accused, and quite apart from the inadmissibility thereof and the exception specifically formulated by the defence and accepted at the hearing, with reference to the provisions of article 727 of the Criminal Procedure Code (cfr. Transcription of public hearing on 29.01.2003, page 31 submitted by the Public Prosecutor), and their well-mannered observations relating to the formal regularity thereof, this Court notes that the many varied elements that emerged during a detailed analysis of these documents do not refer to any specific event, nor do they define a specific time frame relevant to the matter being examined, but rather present investigative possibilities, which would require further investigation, especially with regard to the alleged intrusive capacity linked to the undisputed financial clout of the accused (cfr. In particular, information sheets drawn up by A.A. Smith and forwarded to A. Grassi which by the way make reference to interception activities that have been ruled inadmissible; statements made in an unspecified location by Abraham Smith and Piet Viljoen; analysis on Italian organised crime dated 02.03.1998 drawn up by Inspector A.A. Smith, making reference to alleged contact between Palazzolo and the fugitive Morettino without furnishing any telephone records; report drawn up by Commissioner Fivaz and Inspector P.J. Viljoen in which they profile the accused, describing as proven certain unspecified facts with regard to the accused's alleged contacts with well-known local criminal elements, with whom he allegedly set up an actual organisation for the purposes of recycling money and drug trafficking; A.A. Smith's curriculum from which information emerges regarding contacts between Palazzolo and Director A.E. Lincoln, ex commander of Smith, who had also reported on Smith regarding his cooperation with the Italian police for the purposes of

arresting the fugitives; transcription of a video cassette of a programme that was transmitted in South Africa).

Nor on the other hand, could this hearing examine the interceptions made on the telephone instrument that Palazzolo was using in South Africa, as was also argued by the defence. These referred to conversations that took place between the accused and his sister Sara, and are largely summarised in the report by the Central Operating Services of the Italian police dated 22 January 1997. This hearing agrees that these may not be admitted for the reasons expressed by the Third Section of the Court of Palermo, which in its judgment dated 8 January 2003, excluded them from the proceedings due to the lack of prior rogatory authorisation (cfr. Copy of judgment submitted by the defence at the hearing on 30 May 2003).

In this respect, nothing new is added by the circumstantial evidence submitted by witnesses Andrea Grassi and Stefano Zampolini who were both part of the Central Operating Services of the Italian Police in 1996, at the time the events to which they refer took place. They both speak of the investigations carried out in order to apprehend the above fugitives, together with members of the Presidential Investigation Task Unit (that had been constituted for this purpose by President Mandela), specifying that they received assurances from their foreign counterparts that there was a group consisting of two men, a woman and a child at Palazzolo's residence, called "La Terre de Luc" during a period of time that was definitely subsequent to the issuing of the restrictive measures in terms of article 416 bis of the Criminal Code on 29 May 1996, and that a search carried out by the local authorities at the above residence found clothing and personal effects belonging to the above group, who had allegedly left for Namibia (cfr. Page 39, 141 and following of transcription of hearing dated 15.01.2003, and page 223 of transcription of hearing dated 29.01.2003).

These elements could in fact be taken into positive consideration at this hearing, to prove the less serious crime of aggravated abetting in terms of article 7 of Law no. 152 dated 13 May 1991, but given that they were committed overseas, the related problems of being able to prosecute in terms of article 9 of the Criminal Code would apply.

On the basis of the considerations outlined above and having to apply the legal principles espoused by the Supreme Court of Appeal, and in correlation with the limited areas of cognizance of the precautionary measures, we find that the state has no elements of proof against the accused that would reach the necessary threshold of seriousness required in terms of article 273 of the Criminal Procedure Code with regard to the charges under article 416 bis of the Criminal Code, so that the appeal must be granted, and consequently the custody measures are hereby revoked, and the further exceptions and defences put forward by Palazzolo are absorbed into this judgment.

FOR THIS REASON

Following the decision of the Appeal Court (92/04), this Court of Review grants the appeal submitted by the defence of **Vito Roberto Palazzolo** on 4 April 2002, and

annuls the order handed down on 18 March 2002 by the Preliminary Investigating Judge at the Court of Palermo, and consequently, revokes the precautionary custody measures in force and applied against the accused with provision dated 19 February 1997.

This document is forwarded to the registrar's office for the necessary registration.

Thus decided at Palermo on 6 April 2004.

[Stamp of the Court of Review of Palermo]

Signed: Judge President

Judge members